IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.406 OF 2007

Shivaji Nana Shinde .. Petitioner.
Vs.
The Home Dept. & Ors. .. Respondents.

Mr.Niranjan Mundargi for the petitioner.
Mr.S.R.Borulkar P.P. for the respondent-State.

CORAM : SMT.RANJANA DESAI &
D.B.Bhosale, JJ.

DATE : 16TH MARCH, 2007.

P.C.:

. At the request of learned counsel for the petitioner the name of respondent no.4 is permitted to be deleted from the title of the petition. Amendment to be carried out forthwith.

2. The petitioner is the complainant in C.R.No.I-399/2006 registered at Ambarnath police station. The said C.R. is registered under section 302 read with 34 of the Indian Penal Code and under sections 3, 25 and 27 of the Indian Arms Act.

3. In short, the case of the petitioner appears to be that on 24.10.2006 at about 3.35 p.m. his son was shot dead outside the shop at Ambarnath.

According to the petitioner, on that day at 15.35 hrs. he was sitting in his shop. His son Shailesh was cleaning sugarcanes at a short distance. He heard a loud noise of firing coming from his right side. He saw his son holding his abdomen with both his hands and bending. There was blood on his hands and on his clothes. He also saw Gulabrao Karanjule and Rakesh Yadav running away. Gulabrao Karanjule had a revolver or Katta in his hand and Rakesh Yadav had a gun in his hand. He ran after them to catch them. But he could not do so. Two unknown persons were also running with them. He came back to see his son. As his son was seriously injured he took him to the hospital. He then went and lodged the complaint specifically naming Gulabrao Karanjule and Rakesh Yadav as the accused. Complaint was lodged by him at 5.45 p.m. C.R.No.I-399/2006 was registered interalia under section 302 read with 34 of the Indian Penal Code. The Investigation was set into motion on the basis of this FIR.

4. It appears that accused Rakesh Yadav was arrested. The grievance of the petitioner is that though he had specifically named Gulabrao Karanjule he was not arrested by the police. It appears that Gulabrao Karanjule preferred an application for anticipatory bail in the Sessions Court at Kalyan.

That application was rejected on 30.10.2006. We are informed that one Shriniwas Tembumikar and Sallauddin Shaikh had earlier supported the version of the complainant. Sallauddin Shaikh made an application in the court of Judicial Magistrate, First Class, Ulhasnagar praying that his statement may be recorded under section 164 of the Code of Criminal Procedure (the Code for short). According to him his earlier statement was recorded under force after threatening him and, therefore, he wanted his statement to be recorded under section 164 of the Code. By detailed order this application came to be rejected by the learned Magistrate on 1.11.2006. It appears that thereafter the police recorded supplementary statements of Sallauddin Shaikh on 30th October, 2006 and Tembumikar on 1.12.2006. In the statements these two witnesses changed their earlier version insofar as involvement of Gulabrao Karanjule is concerned.

5. Thereafter the petitioner filed Criminal Writ Petition No.2612 of 2006 in this court praying that the respondents be directed to initiate action against Gulabrao Karanjule and conduct the investigation of C.R.No.I-399/2006 in upright and proper manner. In that petition intervention application was filed by Gulabrao Karanjule. On 22.12.2006 (almost two months after the incident) the

bench headed by Justice Palshikar passed the following order "Put up after vacation. Status quo as of today be maintained till then". It is pertinent to note that till this date there were no fetters on the police preventing them from arresting Gulabrao Karanjule. However, Gulabrao Karanjule was not arrested. We may also note that though the intervention application was made by Gulabrao Karanjule this court observed that it was not inclined to entertain the intervention application of Gulabrao Karanjule. However, in the interest of justice audience was given to Mr.Gupte, learned senior counsel appearing for Gulabrao Karanjule on the question of law as regards maintainability of that petition. After hearing extensive arguments the Division Bench of this Court to which one of us was a party (Ranjana Desai, J.) disposed of the petition on 6.2.2007 as infructuous as chargesheet was filed. It is pertinent to note that in the chargesheet Gulabrao Karanjule was shown as absconding accused and while disposing of the writ petition this court made it very clear that the status quo order passed by the earlier bench was vacated. This Court also observed that the police will be at liberty to proceed as per law.

6. It appears that the petitioner had filed

anticipatory bail application in this court being Criminal Application No.346 of 2007. This application was disposed of on 5.2.2007 by granting limited protection to the petitioner because Criminal Writ Petition No.2612 of 2006 was at that time pending. The learned Single Judge observed that in that petition the Division Bench is to decide whether it is necessary to arrest Gulabrao Karanjule and for that purpose all the relevant facts will be taken into consideration. The learned Single Judge further observed that it would not be appropriate for this Court to grant anticipatory bail to the accused. However, the learned Single Judge granted protection till disposal of the writ petition. Criminal Writ Petition No.2612 of 2006 was disposed of by the Division Bench on 6.2.2007. Therefore, on 6.2.2007 interim protection granted by the learned Single Judge was vacated.

7. It appears that Gulabrao Karanjule thereafter filed Criminal Application No.391 of 2007 for anticipatory bail in this court. On 12.3.2007 that anticipatory bail application was rejected by this court with a reasoned order running into nine pages. Thus, from 12.3.2007 till today there is no order of any court protecting Gulabrao Karanjule from arrest.

We are informed by Mr.Borulkar, learned P.P. that police have obtained order under section 173(8) of the Code from the Court of Judicial Magistrate, First Class, Ulhasnagar permitting them to carry out further investigation. Obviously this application was made because Gulabrao Karanjule could not be arrested and the police want to further investigate to ascertain role of Gulabrao Karanjule.

8. Mr.Gupte, learned senior counsel stated that Gulabrao Karanjule wants to intervene in this petition also and, therefore, the petition may be adjourned, sufficient time may be given to Gulabrao Karanjule and papers of this petition be served on Gulabrao Karanjule. In the circumstances of the case we are not inclined to allow Gulabrao Karanjule to intervene in this matter. However, in the interest of justice, we have given audience to Mr.Gupte and we have heard him for quite sometime.

9. Mr.Gupte has addressed us mainly on the facts of the case. We must note that Mr.Gupte fairly submitted that so far as the prayer of transfer of investigation is concerned the accused has no say and he has no right to oppose transfer of investigation in case the court wants investigation to be transferred.

10. On the facts Mr.Gupte submitted that incorrect statements are made by the petitioner's counsel. He submitted that it is incorrect to say that Gulabrao Karanjule is absconding. He is very much present and he has been attending Ambarnath Municipal Council. He submitted that it is wrong to say that at the instance of Gulabrao Karanjule the witnesses changed their statements. Mr.Gupte submitted that witnesses on their own approached the Magistrate and their statements are in sealed cover. Mr.Gupte further submitted that three witnesses have in fact approached the Commissioner of Police making grievance against the petitioner that he has forced them to make statements. Mr.Gupte further pointed out that before the complaint was registered there is recorded telephonic message which states that a man of Gulabrao Karanjule has shot son of the petitioner. He submitted that relevant facts are not being pointed out to the court. He submitted that statements of three independent witnesses were recorded and they stated that one person was present at the time of incident and he shot at the petitioner's son. Mr.Gupte further submitted that at the relevant time Gulabrao Karanjule was very much present at home. Since police protection is granted to him Police Constable Vanjari was on duty and

statement of Vanjari to the effect that Gulabrao Karanjule was at his house from morning to evening on the relevant day is recorded. Mr.Gupte draw our attention to the FIR and contended that there were previous incidents between Karanjule's family and complainant's family and obviously Gulabrao Karanjule is falsely involved. Mr.Gupte further submitted that scene of offence panchnama does not support the case of the prosecution that bullet was fired from a revolver. Mr.Gupte submitted that under section 173(8) of the Code further investigation could be directed only if investigating agency comes across fresh piece of evidence. The learned counsel urged that no case is made out for transfer of investigation and such drastic order should not be passed because it is likely to affect two other accused who are in the custody. He, therefore, urged that the petition may be dismissed.

11. We have also heard Mr. Borulkar, learned PP. We have given deep thought to the submissions advanced by both sides. There could be no dispute about the fact that in the FIR which was registered on 24/10/06 at 5-45 p.m. the petitioner has mentioned name of Gulabrao Karanjule as the man whom he saw running with a revolver in hands along with Rakesh Yadav, who had a gun in his hands. The

incident took place at 3-35 p.m. and the FIR is registered on the same day at 5-45 p.m. The FIR is registered promptly. Prima facie therefore, there appears to be no scope for manipulation or concoction. It is true that it is not for this court to direct the police to arrest anybody. It is also true that not in all cases arrest must be effected. But prima facie what disturbs us is the fact that Rakesh Yadav, who has been attributed role similar to that attributed to Gulabrao Karanjule has been arrested by the police. Gulabrao Karanjule, however, has not been arrested despite the fact that for a considerable period there was no order protecting him from arrest and it is his case that he was not absconding. Against this background, we find it amazing that some of the witnesses, who had earlier supported the petitioner's version should give supplementary statements to the police changing their version. It is pertinent to note that the application made by one of them to record his statement under Section 164 of the Code has been rejected by the learned Magistrate.

12. After the application for anticipatory bail filed by Gulabrao Karanjule was rejected on 30/10/06, there was no order of any court protecting him yet he was not arrested. The Division Bench of this court

headed by Justice Palshikar granted the order of status quo on 26/12/06. From 30/10/06 till 26/12/06 no arrest was effected.

13. It is pertinent to that in the affidavit filed by the investigating officer in Criminal Writ Petition No. 2612 of 2006 the investigating officer has stated that on 11/12/06, 12/12/06 and 13/12/06 i.e. prior to the status quo order dated 26/12/06, efforts were made to arrest Gulabrao Karanjule, however, he was not traceable. This statement, however, runs counter to the certificate issued by Ambarnath Nagar Parishad showing that from 27/10/06 to 3/2/07 Gulabrao Karanjule was attending Ambarnath Nagar Parishad. This certificate comes from the custody of Gulabrao Karanjule. There could be no dispute about this certificate. If the certificate is correct then the statement made by the investigating officer in his affidavit in Criminal Writ Petition No. 2612 of 2006 appears to be incorrect because on 11/12/06, 12/12/06 and 13/12/06 Gulabrao was very much available as he was attending the meetings of the Nagar Parishad. Therefore, though available Gulabrao was not arrested. The conduct of investigating agency qua Gulabrao becomes suspect.

14. Mr. Gupte submitted that Gulabrao is falsely implicated. At this stage, we would not like to deal with Mr. Gupte's submissions on facts. It is for the trial court to deal with facts. Mr. Gupte relied on the affidavit of the investigating officer filed in Criminal Writ Petition No. 2612 of 2006 to contend that no case is made out for arrest. We will leave the decision to arrest entirely to the investigating agency. We are merely examining the conduct of the investigating agency. We must, however, repeat that, if Rakesh Yadav, whose role is similar to that of Gulabrao is arrested, the investigating agency will have to offer acceptable explanation as to why it has not arrested Gulabrao. Prima facie, we feel that so far it has not been successful in doing so. Investigating agency's conduct qua investigation regarding Gulabrao's involvement must come under scanner.

15. We also do not find substance in the submission of Mr. Gupte that no case was made out for order under Section 173(8) of the Code. In our opinion, it is open to the investigating agency to move the learned Magistrate for permission to carry out further investigation, if circumstances so demand. Besides in this case the order passed by the learned Magistrate is not under challenge before us.

We, therefore, do not want to comment on it. In compliance with the order the police must proceed with further investigation.

16. Taking an overall view of the matter, we feel that this is a case where further investigation must be transferred to State C.I.D. The investigating agency must be given a free hand to carry out investigation in accordance with law. It must not work under pressure from any quarters and, if there is any doubt about its conduct in the interest of justice, investigation must be transferred. In this case, the petitioner has been successful in creating doubt about the investigating agency's conduct in carrying out investigation to find out Gulabrao Karanjule's involvement. Hence further investigation needs to be transferred to State C.I.D. We are informed that order of this court rejecting anticipatory bail application filed by Gulabrao Karanjule is challenged before the Supreme Court. In our opinion, that will not have any bearing on the issue of transfer of further investigation.

17. Hence, we pass the following order:

. Further investigation of C.R.No.I-399/2006 registered with Ambarnath police station is

transferred to the State C.I.D. The State C.I.D. shall carry out further investigation. The investigation be carried out expeditiously. We make it clear that nothing said in this order be interpreted to mean that we have expressed any final opinion on the merits of the case. The petition is disposed of.

(SMT.RANJANA DESAI, J.)

(D.B.BHOSALE, J.)